

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>United States of America,</b>	)	<b>CASE NO. 4:13CR316</b>
	)	
<b>Plaintiff-Respondent,</b>	)	<b>JUDGE PATRICIA A. GAUGHAN</b>
	)	
<b>Vs.</b>	)	
	)	
<b>Vir'Dez A. Evans,</b>	)	<b><u>Memorandum of Opinion and Order</u></b>
	)	
<b>Defendant-Petitioner.</b>	)	

This matter is before the Court upon petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (Doc. 23). On June 26, 2013, petitioner was charged in an indictment with a single count of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g) and 924(a)(2). Petitioner pled guilty to the indictment without a plea agreement. This Court calculated petitioner's sentence in accordance with U.S.S.G. § 2K2.1(a)(2), which requires that a defendant have two qualifying "crimes of violence." Petitioner's qualifying predicate offenses were two Ohio convictions for failure to comply with the order or signal of a police officer.

Petitioner now seeks to challenge his sentence under *Johnson v. United States*, 135 S. Ct. 2551, 2563 (2015), which struck down the residual clause of the Armed Career Criminal Act's

definition of a “violent felony” as void for vagueness. Petitioner argues that his failure to comply offenses no longer qualify as violent felonies under *Johnson*. The Sixth Circuit, however, in *In re Lewis*, No. 15-3915, at \*2 (June 29, 2016), held that, as applied to the residual clause of the Guidelines, *Johnson* is not retroactive to cases on collateral review. *See also Carson v. United States*, 5:11 CR 145 (N.D. Ohio May 6, 2016). Petitioner’s motion is therefore DENIED.

Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253; Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan  
PATRICIA A. GAUGHAN  
United States District Judge

Dated: 7/1/16